

Statement of Rep. John Conyers, Jr.
Hearing on H.R. 5, Medical Malpractice
2141 Rayburn House Office Building
March 4, 2003, 9 AM

In my judgement, proposals by the Majority to cap awards for pain and suffering and limit malpractice judgements constitute one of the greatest dodges since “Harry and Louise.”

First, let me remind everyone that the reason malpractice insurance premiums are rising is that investment income by insurance companies is plummeting. You don't have to be an economics major to understand that insurers make their money from investment income. During years of high stock market returns and interest rates, malpractice premiums go down. When investment income decreases – and we are in the middle of a four year bear market – the industry responds by sharply increasing premiums and reducing coverage, creating a ‘liability insurance crisis. This boom-bust cycle took place in the 70's and 80's, and its happening again now.

Second, draconian laws capping damages do not reduce insurance premiums. A comparison of states that have enacted severe tort restrictions and those that have not, performed by the Center for Justice and Democracy found no correlation between tort reform and insurance rates. Indeed, some of the resisting states experienced lower increases in insurance rates, while some states that enacted tort reforms experienced higher rate increases relative to the national trends. For example, last year's data showed that in the practice of internal medicine, states with caps on damages had higher premiums than states without caps. For general surgeons, insurance premiums were 2.3% higher in states with caps on damages. On average, malpractice premiums were no higher in the 27 States that have no limitations on malpractice damages, than in the 23 States that do have such limits.

Third, H.R. 5 is blatantly unfair on its face. If you don't believe me, just ask Sherry Keller. Ms. Keller underwent a complete hysterectomy about four years ago. The doctor failed to suture the incision site and instead just stapled her shut. Ms. Keller returned to her doctor when the wound began oozing. On the examination table, the doctor pulled on the

incision and it opened back up as if she were in surgery. The doctor then left Ms. Keller on the table for about 45 minutes, attending to other patients and personal matters. Ms. Keller went into shock, lost consciousness and fell off the table. She bumped her head and suffered spinal cord injury and traumatic brain injury. She had to drag herself into the hallway before anyone noticed. Her doctor at first refused to call an ambulance and then refused to allow anyone at the hospital to give Ms. Keller any medical attention. Two and a half hours later, Ms. Keller's doctor arrived at the hospital, cleaned the wound and sent her home. Ms. Keller is now a complete quadriplegic.

Ms. Keller is with us today and will explain that it would be next to impossible for her to obtain any form of meaningful damages to account for their indescribable pain and suffering. I'd like to challenge any Member here to tell me that a lawsuit for non-economic damages in any way, shape, or form constitutes a "bonanza" or "jackpot."

With this bill, the big insurance companies are trying to convince us that the cause of skyrocketing medical malpractice premiums is trial lawyers. This is a technique as old as William Shakespeare. In Henry VI, the king and his minions hatched a plan "First thing we do, let us kill all the lawyers." A corrupt king and his followers are trying to figure out how to suspend everybody's freedoms and rights, and the only people who could stand up for regular people?

My colleagues guessed it: the lawyers. The reality is, grossly negligent health care professionals have more to do with high awards than the lawyers do. The reality is 100,000 people die each and every year from medical malpractice. Whatever the reasons for the anger the President has toward lawyers, his proposal doesn't hurt lawyers nearly as much as it hurts innocent victims of medical malpractice.